

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Criminal Appeal No.290 DB of 1999

Date of decision: 28.2.2008

Didar Chand and others

-----Appellants

Vs.

State of Punjab

-----Respondent

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE S.D.ANAND**

Present: Mrs.Baljit Kaur Mann, Advocate with
Mr. Mr. Sandeep Mann, Advocate for the appellants.

Mr. Rajesh Bhardwaj, DAG, Punjab.

JUDGMENT:

Appellants Didar Chand @ Dari, Kamaljit Singh, Hakumat Rai, Malkiat Rai and Bhagirath Chand challenge their conviction, inter-alia, under section 302 IPC, for which they have been awarded life imprisonment and other lesser sentences.

Case of the prosecution is that on 25.6.1997 at 11.30 AM, an altercation took place between the appellants on the one hand and PW5 Janaki Devi, wife of PW3 Gurdial Singh, PW4 Narinder Singh son of PW3 Gurdial Singh and Parminder Singh (deceased), son of PW3 Gurdial Singh, on the other. The cause of altercation was that the accused wanted to fix a wooden post for the electric wires near the house of Darshan Kaur, to which the deceased and the injured were objecting. Accused Bhagirath

Chand, who was empty handed, raised 'lalkara' exhorting the co-accused to catch hold of the complainant party and teach them a lesson. Bhagirath Chand caught hold of Parminder Singh from his back side. Didar Chand alias Dari gave 'dagger' blow hitting him on the left side of his chest. Accused Hakumat Rai gave 'dagger' blows to PW5 Janki Devi hitting her in the chest and abdomen. Accused Kamaljit gave 'dagger' blow to PW4 Narinder Singh hitting him in his chest. Malkiat Rai gave 'dagger' blow to Narinder Singh hitting him on his right arm. The injured raised alarm, on which the accused fled away alongwith their weapons. Gurdial Singh arranged a conveyance and took Janki Devi, Narinder Singh and Parminder Singh to Civil Hospital, Phagwara from where they were referred to Dayanand Medical College, Ludhiana. On reaching the said Hospital, Parminder Singh died. Narinder Singh and Janki Devi were found unfit to make statement. On receiving a message, ASI Gurdip Singh PW15 came to the hospital and recorded statement of Gurdial Singh PW3, who was attending the injured and on that basis, FIR was registered. ASI Gurdip Singh PW15 prepared inquest report and made application for post mortem examination.

PW2 Dr. Gulzar Singh Viridi conducted post mortem examination and found following injuries on the person of Parminder Singh, deceased:-

“1) A sharp, incised wound, vertically placed in the epigastrium region measuring 5 cm x 2 cm wound was gaping.

2) An incised wound, obliquely placed in the left axilla at the level of left nipple, 6” lateral to left nipple, measuring 3 cm x 1 cm in size. Eyes and mouth were closed. Scalp and skull were healthy and normal.”

In his opinion, cause of death was stabbing leading to injuries of liver and lung. The injuries were ante-mortem in nature and sufficient to cause death in the ordinary course of nature.

ASI Gurdip Singh PW15 then went to the place of occurrence, prepared site plan and recovered blood stained earth. The accused were arrested and weapons of offence were recovered.

Janki Devi PW5 was examined by Dr. Ashish Gupta PW7 on 25.6.1997 at 14.48 hours, who found the following injuries:-

“She gave the history of bleeding from wounds and on examination, she was conscious, obeying commands, sweating dehydrataid pallor pulse 96 per minute B.P.120/70, R.R.20 per minute, chest bilateral air entry present, decrease on left side. P.A. Distanded, B.S. negative, GCS 15/15.

Injuries

1)Wound approximately 4 cm x 1 cm clean cut just below the right costal margin. The fat was protruding out. Active bleed present.

- 2)Cut wound horizontal 3 cm sub mammary below left nipple.
- 3)Cut wound horizontal approximately 3 cm which was 3 cm below wound No.2.
- 4)Cut wound horizontal above left nipple approximately 6 cm.”

The injuries were by sharp-edged weapon. Injury Nos. 1 and 3 were declared dangerous to life.

Narinder Singh PW4 was also examined by Dr. Ashish Gupta PW7 on 25.6.1997 at 15.12 hours. Following injuries were found:-

- “1) Approximately 2 cm vertical clean cut wound at xiphisternum.
Approximately 5 x 2 cm clean cut wound on right forearm. Posterior lateral aspect active bleed present, muscles protruding.
Approximately 6 x 2 cm wound lacerated right arm lateral aspect muscles cut and exposed. Blood present.”

The injuries were dangerous to life. Injury Nos. 1 and 2 were caused by sharp-edged weapon, while injury No.3 may have been caused by blunt weapon.

After completing the investigation, the accused were challaned.

The prosecution examined PW1 Dr. Gurdit Singh, PW2 Dr. Gulzar Singh Viridi, PW3 Gurdial Singh, PW4 Narinder Singh,

PW5 Janki Devi, PW6 Darshan Kaur, PW7 Dr. Ashish Gupta, PW8 Dr. Manoj Gupta, PW9 Dalip Singh Draftsman, PW10 HC Jasbir Singh, PW11 Constable Swaran Singh, PW12 Harbhajan Singh Sarpanch, PW13 Inspector Balkar Singh, PW14 Constable Balwinder Singh and PW15 ASI Gurdip Singh.

The accused denied the prosecution allegations. Didar Chand and Kamaljit Singh took the plea that they were assisting the electricity employees in fixing the wooden post in the street. Janki Devi, Parminder Singh and Narinder Singh came there and started uprooting the wooden post. On objection of Didar Chand and Kamaljit Singh, they started causing injuries to them. In defence, Didar Chand alias Dari and Kamaljit Singh caused injuries to Parminder Singh, Narinder Singh and Janki Devi. Gurdial Singh was not present. Bhagirath Chand, Hakumat Rai and Malkiat Rai were also not present. The room owned by Darshan Kaur was in possession of the accused and, thus, the complainant party was the aggressor. The accused examined DW1 Sawinder Singh, Lineman of Punjab State Electricity Board and DW2 Dr. Rajiv Gupta, medical Officer, Civil Hospital, Phagwara.

The trial court, after appreciating the evidence on record, accepted the version of three eye witnesses - PW3 Gurdial Singh, PW4 Narinder Singh and PW5 Janki Devi and convicted Didar Chand under section 302 IPC for causing the death of

Parminder Singh. Other accused were convicted under sections 302/149 IPC for having acted in prosecution of common object. Hakumat Rai was convicted under sections 307 and 324 IPC for causing injuries to Janki Devi and Kamaljit Singh was convicted for having caused injuries to Narinder Singh. Malkiat Rai was convicted under section 324 IPC for causing injuries to Narinder Singh. Apart from conviction for individual role, other accused were also convicted for vicarious liability for acting in prosecution of common object.

We have heard learned counsel for the parties and perused the record.

Contention raised on behalf of the appellants is that all the five appellants were brothers. Accused are from their collateral family. Bhagirath Chand was living at Dehradun. He was empty handed and has been given the role of catching hold of the deceased, which could be an exaggeration. The occurrence having taken place all of a sudden without pre-meditation, only Didar Chand alias Dari having assaulted the deceased Parminder Singh, other accused could be responsible only for their individual role. It was also submitted that Didar Chand alias Dari also acted in exercise of right of private defence.

Before examining the above contention, we may make a brief reference to the evidence on record.

PW3 Gurdial Singh is father of the deceased Parminder Singh and injured Narinder Singh and also husband of injured Janki Devi. He is the author of the FIR. He supported the version given by him in the FIR. According to him, on 25.6.1997 at 11.30 AM, he was at his house when the accused came to fix a wooden pole by removing the iron angle. He checked them accompanied by his wife and sons, on which the altercation took place and the accused assaulted his sons and wife. In cross examination, he admitted that the place of occurrence was in the street on a corner of the house of Darshan Kaur and between the said place and his house, there were houses of 10-15 persons. He admitted that two three officials of Electricity Department had come and were doing the work at the spot. PW4 Narinder Singh injured also gave identical version. Same is the version of PW5 Janki Devi. PW6 Darshan Kaur, owner of the house near which the occurrence took place, deposed that she had handed over the house to Gurdial Singh, who was son of her sister and also son of elder brother of her husband. The version given by Darshan Kaur PW6 is also supported by the version given by PW12 Harbhajan Singh.

The above ocular account clearly shows that the occurrence did not take place in the house of the complainant but in the street. There could be no question of pre-planned attack in such circumstances. The issue of dispute was sudden and was not

pre-existing. In these circumstances, there is merit in the contention that occurrence took place all of a sudden. Thus, the accused will be responsible for their individual role only.

In his statement under section 313 Cr.PC, Didar Chand stated that he and Kamaljit Singh were assisting the electricity employees in fixing the wooden pole in the street. The complainant party started obstructing the same and then they started causing injuries to him and Kamaljit Singh and he caused injuries in private defence. Except him and Kamaljit Singh, other accused were not present. PW3 Gurdial Singh was also not present. Similar is the stand of other accused. DW1 Sawinder Singh is not a witness to the actual occurrence but has only deposed that the complainant party objected to the fixing of the pole. DW2 Dr. Rajiv Gupta, Medical Officer, examined Kamaljit Singh and Didar Chand and found simple injuries on non-vital parts. He examined the said injured persons on 29.6.1997, while the occurrence took place on 25.6.1997.

There is nothing to show that any member of the complainant party was armed. Injuries on the accused do not suggest use of any particular weapon nor it is shown that the injuries were received in the same occurrence. Burden of proving alibi or private defence is on the accused. There being no satisfactory evidence, the plea of private defence or of alibi could

not be accepted. Thus, case of the prosecution was fully proved against Didar Chand and there is no merit in his appeal.

Kamaljit Singh, Hakumat Rai and Malkiat Rai will be liable for their individual role and not for the acts of Didar Chand.

Bhagirath Chand could have been named by way of exaggeration and we consider it safe to give him benefit of doubt.

We uphold the conviction and sentence of Didar Chand and dismiss his appeal. We allow the appeal of Bhagirath Chand and give him benefit of doubt and acquit him. We partly allow the appeal of Kamaljit Singh, Hakumat Rai and Malkiat Rai and set aside their conviction under sections 302/149 IPC and the sentence of life imprisonment. We uphold their conviction on other counts. They are sentenced to undergo period of imprisonment already undergone by them. We are informed that they have been in custody for more than three to five years. We set aside sentence of fine but they they will pay total compensation of Rs.2 lacs to Janki Devi and Narinder Singh injured, to be shared by them equally. In default, they will undergo further RI for one year each.

(Adarsh Kumar Goel)
Judge

February 28, 2008

(S.D.Anand)
Judge

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